Supreme Court, U.S.
FILED
FEB 2 4 2004
OFFICE OF THE CLERK

(3)

No. 03-847

IN THE

Supreme Court of the United States

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
Petitioner,

v.

AMERICAN EAGLE AIRLINES, INC.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF FOR THE AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

EUGENE B. GRANOF *
JONATHAN A. COHEN
JERRY ANKER
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL
535 Herndon Parkway
Herndon, VA 20170
(703) 481-2421

* Counsel of Record

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. THIS CASE PRESENTS AN EGREGIOUS DEPARTURE FROM WELL SETTLED LAW, NOT MERE FACTUAL ERRORS	1
II. CONTRARY TO RESPONDENT, FIFTH CIRCUIT PRECEDENT SIGNIFICANTLY DEPARTS FROM THE PRINCIPLE OF JUDICIAL DEFERENCE TO LABOR ARBITRATION AWARDS	3

TABLE OF AUTHORITIES

CASES	Page
Atchison T. & S.F. Ry. Co. v. United Transp. Union, 175 F.3d 355 (5th Cir. 1999)	4
Bruce Hardwood Floors v. UBC, Southern Council of Indus. Workers, Local Union No. 2713, 103 F.3d 449 (5th Cir. 1997), *cert. denied*, 522 U.S. 928 (1997)	3
Chauffeurs, Teamsters & Helpers v. Coca-Cola Bottling Co., 613 F.2d 716 (8th Cir.), *cert. denied*, 446 U.S. 988 (1980)	2
Container Products, Inc. v. United Steelworkers of America and its Local 5651, 873 F.2d 818 (5th Cir. 1989)	3
Delta Queen Steamboat Co. v. Dist. 2 Marine Eng'rs Beneficial Ass'n, 889 F.2d 599 (5th Cir. 1989), *reh'g denied en banc*, 897 F.2d 746, *cert. denied*, 498 U.S. 853 (1990)	3
E.I. DuPont de Nemours & Co. v. Local 900, Int'l Chemical Workers Union, 968 F.2d 456 (5th Cir. 1992)	3
General Drivers, etc. Local Union 968 v. Sysco Food Services, Inc., 838 F.2d 794 (5th Cir. 1988)	4
Houston Lighting & Power Co. v. IBEW, Local Union No. 66, 71 F.3d 179 (5th Cir. 1995), *cert. denied*, 519 U.S. 809 (1996)	3
Oil, Chemical & Atomic Workers, etc., Local No. 4-228 v. Union Oil Co., 818 F.2d 437, 125 LRRM 2630 (5th Cir. 1987)	4
Six Flags Over Tex. v. IBEW, Local No. 116, 143 F.3d 213 (5th Cir. 1998)	4
United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29 (1987)	*passim*

TABLE OF AUTHORITIES—Continued

CASES

Page

Weber Aircraft, Inc. v. Gen. Warehousemen & Helpers Union Local 767, 253 F.3d 821 (5th Cir. 2001)..... 4

IN THE

Supreme Court of the United States

No. 03-847

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
Petitioner,

v.

AMERICAN EAGLE AIRLINES, INC.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF FOR THE AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

I. THIS CASE PRESENTS AN EGREGIOUS DEPARTURE FROM WELL SETTLED LAW, NOT MERE FACTUAL ERRORS.

Respondent American Eagle erroneously asserts that the issue in this case involves only the "fact specific application" of the legal principles set forth in *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29 (1987). Opposition ("Opp.") 6-7. In fact, the Fifth Circuit merely paid lip service to the *Misco* principles, but did not apply them at all. Rather, the Court of Appeals egregiously departed from those principles by substituting its own interpretation of the collective bargaining agreement ("CBA") for that of the System Board.

First, the Court of Appeals rejected the System Board's interpretation of the CBA with respect to the issue of whether the grievant waived his right to a first-step grievance hearing by proceeding to arbitration. The CBA was at best ambiguous on this issue. It "required" a first-step hearing, but also provided that if no such hearing was held a grievant could proceed to arbitration. The waiver issue thus presented involved a question of pure contract interpretation, and the clear holding of *Misco* compels judicial deference to the interpretation adopted by the Board.[1]

Second, the Court of Appeals held that the Company's denial of a first-step hearing had to be disregarded because it occurred after the grievant was terminated, and, hence, had no bearing on the issue of whether the grievant was discharged for just cause. This holding, too, is at odds with *Misco*, 484 U.S. at 40, for it substitutes the Court's narrow view of the meaning of "just cause" for that of the System Board. As other courts have recognized, arbitrators frequently define "just cause" as including compliance with the contract's grievance procedures. *Chauffeurs, Teamsters & Helpers v. Coca Cola Bottling Co.*, 613 F.2d 716 (8th Cir.), *cert. denied*, 446 U.S. 988 (1980); and cases cited at Petition 6 n.1, 8 n.3.

---

[1] Respondent makes a number of assertions based on evidence that was presented at the arbitration hearing, but those assertions were neither adopted as findings by the Board nor relied on by the District Court or the Court of Appeals: *e.g.*, that ALPA did not timely request "scheduling" a first-step hearing, and then refused to accept the Chief Pilot's offer to recuse herself and arrange for a substitute (Opp. 3); that the grievant previously "was subject to multiple internal disciplinary proceedings" (Opp. 1); and that the grievant was "deeply intrigued by Adolph Hitler and his Nazi philosophies" and exhibited a photo of himself dressed as Hitler (Opp. 2).

Third, the Court of Appeals' holding that there was an "implicit finding" of just cause in the Board's opinion is nothing more than a blatant substitution by the Court of its own determination of just cause for that of the Board. The Court's logic, which treats the Board's finding that the grievant engaged in "serious misconduct" as a finding that discharge was the appropriate penalty, is a total *non sequitur*. Indeed, the Board's own words directly contradict the Court's logic, for the Board stated explicitly that "[t]o remedy the serious violations by Captain Balser, we find that a substantial period of time without pay (in effect, a disciplinary suspension without pay [rather than a discharge]) is appropriate." Petition 4.

II. CONTRARY TO RESPONDENT, FIFTH CIRCUIT PRECEDENT SIGNIFICANTLY DEPARTS FROM THE PRINCIPLE OF JUDICIAL DEFERENCE TO LABOR ARBITRATION AWARDS.

Respondent argues that the Fifth Circuit generally "exhibits great deference to arbitration awards . . ." Opp. 8. However, as the five cases described in the Petition[2] (and the instant case) demonstrate, the Fifth Circuit has repeatedly

---

[2] Petition 10-14, citing *Bruce Hardwood Floors v. UBC, Southern Council of Indus. Workers, Local Union No. 2713*, 103 F.3d 449 (5th Cir. 1997), *cert. denied*, 522 U.S. 928 (1997); *Houston Lighting & Power Co. v. IBEW, Local Union No. 66*, 71 F.3d 179 (5th Cir. 1995), *cert. denied*, 519 U.S. 809 (1996); *E.I. DuPont de Nemours & Co. v. Local 900, Int'l Chemical Workers Union*, 968 F.2d 456 (5th Cir. 1992); *Delta Queen Steamboat Co. v. Dist. 2 Marine Eng'rs Beneficial Ass'n*, 889 F.2d 599 (5th Cir. 1989), *reh'g denied en banc*, 897 F.2d 746, *cert. denied*, 498 U.S. 853 (1990); *Container Products, Inc. v. United Steelworkers of America & its Local 5651*, 873 F.2d 818, 819 (5th Cir. 1989).

failed to extend such deference to arbitration awards in which the employer is ordered to reinstate a discharged employee when the Court believes that the discharge was warranted. Of the fourteen cases cited by the Respondent (Opp. 8 n.1) in which the Fifth Circuit declined to set aside an arbitration award, only four involved employer challenges to awards directing the reinstatement of discharged employees.[3] In a fifth case, the Court of Appeals reviewed awards by different arbitrators, each dealing with the discharge of a different employee. The Court sustained the award in which the arbitrator upheld the first employee's discharge, but directed the other arbitrator who ordered the reinstatement of the second employee to reconsider that award and take into account the employee's post-award use of drugs.[4]

In short, although the Fifth Circuit has sustained arbitration awards in some discharge cases, it has not done so with anywhere near the regularity required by *Misco* - indeed, by forty years of Supreme Court caselaw. More important, as shown in the Petition, in those cases (including the instant case) in which the arbitration awards have been set aside, the Fifth Circuit's opinions, taken together, reflect a serious misapprehension of the extremely limited nature of judicial review of such awards mandated by the decisions of this

---

[3] *Weber Aircraft, Inc. v. Gen. Warehousemen & Helpers Union Local 767*, 253 F.3d 821 (5th Cir. 2001); *Atchison, T. & S.F. Ry. Co. v. United Transp. Union*, 175 F.3d 355 (5th Cir. 1999); *Six Flags Over Tex. v. IBEW, Local No. 116*, 143 F.3d 213 (5th Cir. 1998); *General Drivers, etc. Local Union 968 v. Sysco Food Services, Inc.*, 838 F.2d 794 (5th Cir. 1988).

[4] *Oil, Chem. & Atomic Workers, etc., Local 4-288 v. Union Oil Co.*, 818 F.2d 437, 125 LRRM 2630 (5th Cir. 1987).

Court. This case presents an opportunity to correct that misapprehension and thus prevent the Fifth Circuit from departing from established law in future cases.

Respectfully submitted,

EUGENE B. GRANOF *
JONATHAN A. COHEN
JERRY ANKER
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL
535 Herndon Parkway
Herndon, VA 20170
(703) 481-2421

* Counsel of Record